

NTSB Order No. EA-5111

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 20th day of September, 2004

Docket SE-16494

Respondent has appealed from the oral initial decision of Administrative Law Judge William E. Fowler, Jr., issued on November 21, 2002, following an evidentiary hearing.¹ The law judge affirmed the Administrator's order suspending respondent's pilot certificate for 180 days for alleged violations of 14 C.F.R. 91.7(a), 91.405(a), and 91.13(a) of the Federal Aviation

7658

Regulations.² We grant the appeal and dismiss the complaint.

The Administrator charged respondent with operating an unairworthy Piper Seneca on two flights, the first on March 7, 2001, from Lancaster, PA, to Quakertown, PA, and the second on March 12, 2001, from Quakertown to Allentown, PA. Specifically, the Administrator alleged that the airplane was unairworthy because its elevator³ trim cable was damaged and frayed.

Respondent is president of a Part 141 flight school in Allentown. It is undisputed that sometime in late February, 2001, while respondent was on an extended absence from his business,⁴ one of his employees flew the Seneca from Allentown to a certified avionics repair station in Lancaster for repairs to the autopilot. This repair facility found that the Seneca had, among other things, a frayed trim cable. Upon respondent's return, he communicated with the repair station's manager, Todd Adams, who gave him an estimate for repairs to the autopilot, and

² Section 91.7(a) prohibits operating an aircraft unless it is airworthy. Section 91.405(a) requires inspections pursuant to Part 91, Subpart E, and requires that [except with regard to instruments or equipment permitted by 91.213(d)(2) to be inoperative], between inspections, discrepancies be repaired in accordance with Part 43. Section 91.13(a) prohibits careless or reckless operations so as to endanger the life or property of another.

³ As respondent points out, the term "elevator" is technically incorrect because the Piper Seneca is equipped with a stabilator (a movable horizontal stabilizer) rather than an elevator. However, because the Seneca's stabilator performs the same function as an elevator (pitch control), we view this as a minor error in terminology that has little significance in the context of this case.

⁴ Respondent was out of town for several weeks to attend flight training with Mesa Airlines.

told him that the frayed cable needed to be replaced at a qualified maintenance shop.

Respondent elected not to have the autopilot work done at the Lancaster facility and came to pick up his airplane on March 7, 2001. At that time, Mr. Adams (who had previously disabled the autopilot and trim system and placed placards in the cockpit indicating that both systems were inoperative) provided respondent with an adhesive logbook entry, which included the repair station's stamp and a signature, stating that the autopilot and trim were placarded "inop" and describing the (unrelated) maintenance work done. Mr. Adams testified that this logbook entry constituted a return to service. (Transcript (Tr.) 79.) He also testified that he told respondent that, in his opinion, the frayed trim cable was unairworthy; he acknowledged that he never said the airplane was unairworthy and emphasized that he was not qualified to make that judgment. (Tr. 48, 58; Exhibit (Ex.) A-2.)

Respondent flew the airplane on March 7 from Lancaster to Quakertown, where Timothy Briglia, an airframe and powerplant mechanic, had been asked to evaluate the frayed trim cable.⁵ However, when Mr. Briglia quoted him a price for the repair, respondent decided it was too high and he asked Mr. Briglia to

⁵ Although respondent had previously been dissatisfied with maintenance work done by Mr. Briglia, respondent's employees had already made arrangements in his absence for Mr. Briglia to evaluate the airplane. Respondent testified that he decided to go along with their plan so as not to "make waves." (Tr. 327.)

put the airplane back together and, on March 12, 2001, respondent flew the airplane back to Allentown. Mr. Briglia testified that he told respondent he did not think the airplane should be flown with the frayed trim cable because if it broke in flight it could interfere with other flight control cables, but that respondent said he was going to fly it anyway. However, Mr. Briglia acknowledged that he never told respondent he thought the airplane was unairworthy. (Tr. 103, 127-8.)⁶ Mr. Briglia prepared a maintenance entry dated March 12, 2001, bearing his signature and A&P certificate number, which described the frayed trim cable and some (unrelated) maintenance work and stated, "owner requested to have the a/c put back together and no further repairs accomplished." (Ex. A-6.)

The law judge characterized the case as resting on credibility, and found that the Administrator's witnesses were more credible than the respondent's. In upholding the order of suspension, the law judge concluded that the airplane was unairworthy and that respondent knew it was not safe. (Tr. 388, 390.)

On appeal, respondent argues that (1) the airplane was not unairworthy because the trim system is not required by

⁶ Although the Administrator's reply brief states that Mr. Briglia testified he told respondent the airplane was unairworthy, we read his testimony differently. Respondent's counsel attempted to clarify this point by stating, "you think it shouldn't have been flown or it wasn't airworthy? Those are two different things." Mr. Briglia answered, "I said in - in my professional opinion, I did not think the airplane should be flown." (Tr. 128.)

certification regulations and the airplane was never declared unairworthy by qualified maintenance personnel; and (2) even if the airplane was unairworthy, respondent acted in good faith because no qualified maintenance personnel ever told him this. To the contrary, respondent argues, the Seneca was signed off and returned to service prior to each of the flights at issue and he reasonably relied on these maintenance certifications. As further explained below, we agree with respondent's second point and, therefore, need not reach the first.

To be airworthy, an aircraft must conform to its type certificate and be in a condition for safe operation.

Administrator v. Nielsen, NTSB Order No. EA-3755 at 4 (1992).

There is no information in the record about the Piper Seneca's type certificate and, therefore, the Administrator did not establish that an intact trim cable or an operative trim system is required in order for the airplane to conform to its type certificate.⁷ As for whether the airplane was in a condition for safe operation, the Administrator did proffer opinion testimony from two FAA inspectors that, in their opinion, it was not safe because of potential interference with other flight control cables if the trim cable were to break in flight. However, there

⁷ We note that respondent attempts to characterize the trim cable as part of the autopilot system, and he maintains that the autopilot system and its associated trim cable are non-essential optional pieces of equipment. However, contrary to what respondent would have us believe, it is far from clear from the record that the trim cable here at issue is relevant only to the autopilot. To the contrary, even respondent's expert testified that it is the only cable that controls the trim. (Tr. 256.)

is insufficient evidence in the record to conclude that this was a significant or even appreciable risk on the two flights here at issue.⁸ In fact, two months after the flights here at issue, the FAA apparently issued a special airworthiness certificate (also known as a ferry permit) to fly from Allentown to Stroudsburg, PA, for the purpose of maintenance,⁹ which indicates that the FAA deemed it could safely be flown prior to repair of the cable.¹⁰ Accordingly, the record does not appear to support a finding that the airplane was unsafe to fly.

Nonetheless, assuming for our purposes that the airplane was unairworthy as a result of the frayed trim cable, we conclude that the Administrator failed to establish that respondent should be charged with this knowledge. To prove a violation of section 91.7(a),¹¹ the Administrator must show that the airman operated

⁸ The record indicates that 7 of the 49 strands in the cable were found broken. Mr. Adams indicated that, assuming the cable was not moved, in his opinion it was very unlikely that the cable would break and it would be safe to operate the plane in that condition. (Tr. 57, Ex. A-2.)

⁹ The operating limitations for the ferry permit specified "no operation of trim during flight." (Ex. A-3.)

¹⁰ 14 C.F.R. 21.197(a) states that special flight permits "may be issued for an aircraft that may not currently meet applicable airworthiness requirements but is capable of safe flight" for several enumerated purposes, including "[f]lying the aircraft to a base where repairs, alterations, or maintenance are to be performed."

¹¹ Section 91.7(a) is the primary violation here at issue. None of the facts alleged in the complaint relate to the section 91.405(a) charge. Specifically, the Administrator offered no evidence at the hearing as to when the aircraft was due for its annual or 100-hour inspection or to show that the "discrepancies" (in this case presumably the frayed trim cable) had not been repaired as required by Part 43. Further, there is no indication
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an aircraft that he knew or reasonably should have known was not airworthy. Administrator v. Bernstein, NTSB Order No. EA-4120 at 5 (1994), and cases cited therein. Neither Mr. Adams nor Mr. Briglia ever told respondent that the airplane was unairworthy.¹² Further, we agree with respondent that the signed maintenance entries he was given by Mr. Adams and Mr. Briglia could reasonably be relied upon as an indication that the airplane was safe to fly.¹³

Respondent points out that section 91.213(d) permits operation of an aircraft with certain inoperative instruments and equipment that are properly deactivated and placarded "inoperative" so long as they are not required for VFR-day flight by certification regulations or required to be operational by section 91.205. The two FAA inspectors testified that this

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that the Section 91.13(a) charge here is other than a residual claim. See Administrator v. Pritchett, NTSB Order No. EA-3271 (1991) at n.17, and cases cited there (a violation of an operational FAR regulation is sufficient to support a finding of a "residual" or "derivative" section 91.9 [now section 91.13] violation).

¹² To the contrary, Mr. Adams indicated the airplane was safe to fly so long as the trim cable was not operated. Although Mr. Briglia testified that he recommended against flying the airplane with the frayed trim cable, he steadfastly refused to use the term "unairworthy," and also admitted he was unaware at the time he made this recommendation that the autopilot and trim had been placarded inoperative. (Tr. 136.)

¹³ Mr. Adams testified that his facility's signed maintenance entry constituted a return to service. Mr. Briglia denied that his signed maintenance entry constituted a return to service. However, the Administrator's reply brief does not dispute that the maintenance entries may have misled respondent. (Reply Brief at 11-12.)

regulation does not apply to flight control systems such as the trim system, and the trim cable is therefore not the type of "instrument or equipment" covered by this regulation. In contrast, respondent's expert witness indicated that an airplane could be returned to service with the frayed trim cable under the provisions of section 91.213(d). Although we give more weight to the Administrator's position on the applicability of this section, respondent's purported belief that this section authorized operation of his airplane after deactivation and placarding of the trim cable was not unreasonable.

In closing, we note that this case does not appear to rest on a credibility determination. Even when all factual conflicts are resolved in favor of the Administrator's witnesses, in accordance with the law judge's determination, we find that the Administrator still did not prove the charges against respondent by a preponderance of the evidence.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is granted; and
2. The Administrator's complaint is dismissed.

ENGLEMAN CONNERS, Chairman, ROSENKER, Vice Chairman, and CARMODY, HEALING, and HERSMAN, Members of the Board, concurred in the above opinion and order.